IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.,	)	
Plaintiff	)	
	)	
v.	)	C.A. NO.: 03-394E
	)	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.	)	
Defendants	)	ELECTRONICALLY FILED

PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW, OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL; MOTION FOR PREJUDGMENT INTEREST; AND MOTION FOR RECONSIDERATION REGARDING CAUSE OF ACTION UNDER SECTION 14704

Background

1. The above-captioned litigation involves a claim for relief under the Carmack Amendment, 49 U.S.C. § 14704 and § 14706, as a result of physical damage to an industrial x-ray machine which had been shipped in interstate commerce. Plaintiff, Accu-Spec, was the shipper of such equipment. Defendant, Logistics Plus, Inc., was the freight forwarder for the shipment. Defendant, Central Transport International, Inc., was the motor carrier which damaged the equipment in transit.

2. Trial of this matter was heard before a jury commencing on October 17, 2005 and concluding on October 20, 2005.

3. During the course of trial, Plaintiff introduced evidence that, as a result of physical damage to its equipment, it suffered out-of-pocket costs for inspection and repair of the equipment in the amount of $47,521.84. Plaintiff's Exhibit 23. Plaintiff's evidence detailed seven specific categories of expense, one of which involved an inspection of the equipment by a representative of the manufacturer of the equipment. This inspection entailed travel costs in the amount of $2,150.82, which travel costs were included within Plaintiff's total claim of $47,521.84.

4. At a pretrial conference held before the Court on Wednesday, October 12, 2005, Plaintiff's counsel raised the issue of Defendants' position with regard to damages. Specifically, Plaintiff's counsel inquired as to whether the Defendants were contesting the reasonableness and necessity of the repair costs of the equipment. The response by Defendants' counsel was that they were not contesting the reasonableness of the repair cost, but were contesting the need to have an inspector travel from the United Kingdom to the United States to inspect the equipment, and the need to ship the equipment to England for the repairs.

5. At trial, Plaintiff introduced evidence of its damages through the testimony of its President, Mr. Ernie Carlson, and Plaintiff's Exhibit 23. Specifically, Mr. Carlson identified Exhibit 23 as a compilation of damages and attached invoices for each category of damage. Mr. Carlson explained why the equipment had been sent to England for repair and that Accu-Spec had paid for each of the expenses listed on Plaintiff's Exhibit 23.

6. At trial, Defendants' counsel questioned Mr. Carlson about the need for incurring the expense of having an engineer travel from England to inspect the damaged equipment. However, neither Defendant introduced, in cross-examination or within their respective cases-in-

chief, evidence explicitly stating or implying that any other expense incurred by Plaintiff was unreasonable or unnecessary.

7. At the conclusion of trial, jurors were provided with Interrogatories to answer. In response to Interrogatories No. 4 and No. 5, the jury responded as follows:

> No. 4 Was it reasonable for Plaintiff, after discovering that the cargo was damaged, to have the damage inspected by a representative of the manufacturer from England?
>
> YES _______ NO __ X____
>
> Proceed to the next question.
>
> No. 5 Was it reasonable for the Plaintiff, after discovering that the cargo was damaged, to have the cargo shipped to England to be repaired?
>
> YES __X____ NO ______

8. The above findings supported the reduction of Plaintiff's claim by the sum of $2,150.82, such amount being the expenses incurred in having an inspection performed by a representative of the equipment manufacturer from England. This would have reduced an appropriate award to the sum of $45,371.02.

9. At the close of all the evidence at trial, Plaintiff requested that the Court enter a Judgment as Matter of Law pursuant to Federal Rule of Civil Procedure 50.

MOTION FOR JUDGMENT AS A MATTER OF LAW

10. Plaintiff hereby renews its Motion for Judgment as a Matter of Law and requests that the Court enter such judgment against the Defendants in the amount of $45,371.02.

11. The foundation of Plaintiff's request is the total absence of any evidence at trial that might have called into question the reasonableness or necessity of those damages and expenses incurred by Plaintiff in shipping and repairing the damaged equipment.

12. As noted above, neither Defendant presented evidence, either during Plaintiff's case-in-chief or during their own cases-in-chief, which questioned the expenses incurred by Plaintiff, except for the cost of pre-repair inspection.

13. An award of judgment as a matter of law, as requested by Plaintiff, would not contradict the findings of the jury with regard to liability. Further, such judgment, as suggested by Plaintiff, would not contradict the jury's finding with regard to the lack of reasonableness of Plaintiff's inspection of the damaged cargo. Such a judgment as a matter of law would merely reflect that there exists no evidence upon which reasonable minds could differ with regard to the balance of the repair expenses incurred by Plaintiff.

14. A trial court may permissibly adjust a jury's damage award where the jury has found the underlying liability and there is no dispute as to the correct amount of damages. Liriano v. Hobart Corp., 170 F.3d 264, 272-73 (2d Cir. 1999); EEOC v. Massey Yardley Chrysler Plymouth, Inc., 117 F.3d 1244, 1252-53 (11th Cir. 1997).

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in its favor and against the Defendants in the amount of $45,371.02.

MOTION FOR NEW TRIAL

15. As noted above, the jury in the trial of this matter was asked to respond to specific Interrogatories. The answers to these Interrogatories, as well as this Court's ruling as a matter of law with regard to certain elements of Plaintiff's cause of action, demonstrated the following:

a. that Plaintiff had established a *prima facie* case, i.e., that the cargo in question was delivered to the Defendant, Central Transport, in good condition; that the equipment arrived at its destination in damaged condition; and that the Plaintiff suffered monetary damages in the effort to repair the equipment;

b. that Defendants failed in their burden to demonstrate that the damage which had occurred to the equipment was caused solely by an act of the shipper;

c. that Plaintiff's conduct in having the equipment shipped to England for repair was reasonable and necessary.

16. The undisputed evidence at trial established that Plaintiff incurred expenses in shipping the equipment to England for repair in the amount of $45,371.02. Defendants produced no evidence at trial contesting the reasonableness or necessity of such expense.

17. The jury's award of $21,000.00 to Plaintiff, which may have been the result of the jurors' confusion with regard to the calculation of damages, is unsupported by any evidence and is contrary to all of the evidence. If one assumes that the jurors were not confused, that is that they intended to award no more than $21,000.00, then the verdict could only be construed as being the result of impermissible compromise.

18. Because the issue of damages is not significantly intertwined with the issue of Defendants' liability, Plaintiff would request that the Court order a new trial limited to the issue of damages.

19. In the alternative, should this Court believe that the jury's entry of a verdict of $21,000.00 is completely intertwined with the issue of liability, Plaintiff requests that the Court order a new trial as to all issues.

WHEREFORE, Plaintiff prays this Honorable Court to enter an order granting new trial, limited to the issue of damages, or, in the alternative, new trial as to all issues.

MOTION FOR PRE-JUDGMENT INTEREST

20. Under federal law, if a statute is silent as to whether a prevailing plaintiff is entitled to pre-judgment interest, the trial court may award pre-judgment interest unless its award would be unfair. Skrevtvedt v. E.I. DuPont de Nemours, 372 F.3d 193, 206 and n.18 (3d Cir. 2004) (citing cases).

21. As a general rule, pre-judgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the plaintiff whole because it had been denied the use of the money which was legally due. Awarding pre-judgment interest is intended to serve at least two purposes: (1) to compensate prevailing parties for the true costs of money damages incurred; and (2) where liability and the amount of damages are fairly certain, to promote settlements and to deter attempts to benefit from the inherent delays of litigation. Id. at 208.

22. Although Skrevtvedt was decided under the ERISA statute, the purposes of awarding pre-judgment interest under that statute are consistent with the purposes of the Carmack Amendment, two of which are to encourage prompt payment of claims without litigation and to facilitate prompt investigation of claims. Georgia, Florida & Alabama Railway v. Blish Milling Co., 241 U.S. 190, 196-97 (1916).

23. In the present case, an award of pre-judgment interest is warranted because the only defense that the defendants raised to Accu-Spec's claims of liability was that the x-ray machine was improperly packed. However, at no point during the defendant's investigation of Accu-Spec's claim did the defendants assert that the x-ray machine was improperly packed. In particular, George Horetsky did not assert that the x-ray machine was improperly packed when he inspected it on February 13, 2003, the day it was delivered. George Miller, the inspector hired by Central Transport, did not determine that the x-ray machine was improperly packed when he performed his inspection on February 18, 2003. Central Transport did not assert that the x-ray machine was improperly when it denied Accu-Spec's claim in April 2003. Finally, Central Transport did not assert that the x-ray machine was improperly packed when it filed its Answer in the above-captioned case in December 2003.

24. Furthermore, the cargo loss and damage regulations promulgated by the Department of Transportation require prompt and thorough investigation when claims are filed. 49 C.F.R. § 370.5 and 370.7.

25. Because the evidence presented at trial establishes that Central Transport's investigation was neither prompt nor thorough, Accu-Spec is entitled to an award of pre-judgment interest.

26. In the Third Circuit, the pre-judgment interest rate is the same as the post-judgment interest rate calculated pursuant to 28 U.S.C. § 1961. The rate of interest is equal to "the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System for the calendar week preceding the date of the judgment." Becker v. ARCO Chemical Co., 15 F. Supp. 2d 621, 638 (E.D. Pa. 1998).

27. For the week ending October 14, 2005, the week preceding this Court's judgment on October 20, 2005, the applicable rate of interest is 4.14%. (Federal Reserve Statistical Release, Selected Interest Rates, October 17, 2005).

28. Interest begins to run from the date payment should have been made. Unihealth, Inc. v. U.S. Healthcare, Inc., 14 F. Supp. 2d 623, 643 n.30 (D. N.J. 1998).

29. In the present case, the defendants were required to admit, deny or compromise Accu-Spec's claim within 120 days of the date of the claim. 49 C.F.R. § 370.9.

30. Because Accu-Spec submitted its claim to Central Transport on April 4, 2003, Central Transport should have paid the claim within 120 days or August 2, 2003.

31. Therefore, Accu-Spec is entitled to pre-judgment interest at the rate of 4.14% from August 2, 2003 to October 20, 2005 or 2 years and 79 days.

32. If this Court determines as a matter of law that Accu-Spec is entitled to a judgment of $45,371.02, the amount of pre-judgment interest to which Accu-Spec is entitled is $4,163.27.

33. In the alternative, if the court does not modify the jury verdict of $21,000.00, the amount of pre-judgment interest to which Accu-Spec is entitled is $1,926.97.

WHEREFORE, Plaintiff prays this Honorable Court to enter an award of pre-judgment in its favor and against the Defendants in the amount of 4,163.27.

MOTION FOR RECONSIDERATION OF THE GRANT OF PARTIAL SUMMARY JUDGMENT ON ACCU-SPEC'S CLAIM 49 U.S. § 14704

34. District courts have the inherent power to reconsider interlocutory orders when it is consistent with justice to do so, so long as the district court has jurisdiction over the case. In Re: National Forge Company 326 B.R. 532, 541 (W.D.Pa. 2005), citing United States v. Jerry, 487 F.2d 600, 605 (3d Cir. 1973).

35. The grant of partial summary judgment is an interlocutory order.

36. In Count I of its Complaint, Accu-Spec set forth a cause of action against the defendants under 49 U.S.C. § 14704.

37. As set forth in the accompanying Memorandum in Support of Post-Trial Motion on the Issue of Awarding Attorney Fees under 49 U.S.C. § 14704, private parties can bring private causes of action under Section 14704 to enforce the cargo loss and damage regulations set forth in 49 C.F.R. § 379.1 et seq. Crosby v. Landstar, 2005 U.S. Dist. Lexis 12008 at 3 (D.Del., June 21, 2005), citing Owner Operator Independent Drivers Association, Inc. v. New Prime Inc., 192 F.3d 778, 784 (8th Cir. 1999).[1]

38. Because Accu-Spec's claim under Section 14704 is based upon the cargo loss and damage regulations, this case is factually and legally distinguishable from Hoover v. Allied Van

[1] In Crosby, the district court held that the plaintiff ultimately did not have a cause of action under Section 14704 because the plaintiff was suing to recover damages to his truck, not cargo that had been damaged by a carrier.

Lines, Inc., 111 P.3d 1076, 2005 WL 127952 (Kan. App. 2005) upon which this Honorable Court granted summary judgment in favor of the defendants.

39. Specifically, Accu-Spec based its cause of action under Section 14704 upon the defendants' violation of the cargo loss and damage regulations. (Complaint, ¶ 18-26, incorporated into Count I by ¶ 27).

40. In particular, Accu-Spec presented evidence at trial that Central Transport violated its obligations under the cargo loss and damage regulations because it failed to conduct a prompt and thorough investigation of the claim. Jeffrey Cackowski, Central Transport's claims manager, admitted that prior to declining Accu-Spec's claim he did not: (1) speak with the driver who picked up the x-ray machine in California; (2) speak with the driver who delivered the x-ray machine in Pennsylvania; (3) speak with anyone from Accu-Spec; (4) speak with anyone from Logistics Plus; (5) speak with the forklift driver who placed the x-ray machine onto Central Transport's truck in California; (6) speak with Mr. Horetsky, the Central Transport employee who viewed the damaged crate and cargo at Accu-Spec; and/or (7) speak with anyone from Dage regarding the x-ray machine. Mr. Cackowski's testimony revealed that the sole basis for his denial of Accu-Spec's claim was the existence of a receipt from Accu-Spec that contained no notation of cargo damage. However, any presumption that may have been created by such receipt would have been completely dispelled by a simple phone call to Mr. Cackowski's co-employee, Mr. Horetsky, or the Central Transport driver who delivered the cargo. Either of these individuals could have confirmed that the cargo was delivered in a damaged condition. Thus, Central Transport's initial denial (and its only response to Accu-Spec's claim) was the result of a complete lack of investigation.

41. Because Central Transport did not promptly or thoroughly investigate Accu-Spec's claim (or ever respond to Accu-Spec's amended claim), Accu-Spec was required to pursue litigation to recover its damages. Unless courts permit a shipper such as Accu-Spec to pursue private causes of action to enforce the loss and damage regulations and award reasonable attorney fees under Section 14704, carriers such as Central Transport and Logistics Plus may flaunt the regulations and have no incentive to timely and fairly investigate and/or compromise claims.

WHEREFORE, this Honorable Court should reverse its entry of judgment as a matter of law in favor of Central Transport and Logistics Plus on Accu-Spec's claim brought under 49 U.S.C. § 14704 and permit Accu-Spec to prove the amount of reasonable attorney fees to which it is entitled.

Respectfully submitted,

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